

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION OPIATE  
LITIGATION**

This document relates to:

*Jennifer Artz, et al. v. Endo Health Solutions Inc., et al.*  
Case No. 1:19-OP-45459

*Michelle Frost v. Endo Health Solutions Inc. et al.*  
Case No. 1:18-OP-46327

*Salmons v. Purdue Pharma L.P., et al.*  
Case No. 1:18-OP-45268

**MDL No. 2804**

**Case No. 17-md-2804**

**Judge Dan Aaron Polster**

**DEFENDANTS' MOTION FOR LEAVE TO FILE SURREPLY IN OPPOSITION TO  
NAS PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants respectfully request leave to file a short, eight-page surreply in response to NAS Plaintiffs' Reply in Support of Their Consolidated Motion for Class Certification, Dkt. 3555. The proposed surreply and accompanying exhibit are attached hereto as Exhibit 1.

There is good cause to grant Defendants leave to file a surreply. Surreplies are appropriate when "new submissions and/or arguments are included in a reply brief, and a nonmovant's ability to respond to the new evidence has been vitiated." *Key v. Shelby County*, 551 F. App'x 262, 265 (6th Cir. 2014) (quoting *Seay v. Tenn. Valley Auth.*, 339 F.3d 454, 481 (6th Cir. 2003)); see *Wilson v. Adrock*, 2019 WL 5866585, at \*1 (E.D. Ky. May 21, 2019) (same). Courts in this district routinely grant requests to file surreplies where new issues are raised on reply. See, e.g., *Eldridge v. Cardif Life Ins. Co.*, 266 F.R.D. 173, 175 (N.D. Ohio 2010) ("This Court grants leave to file a sur-reply to afford a party an opportunity to address new

issues raised for the first time in the reply.”); *Ferguson v. Lorillard Tobacco Co., Inc.*, 475 F. Supp. 2d 725, 728 n.4 (N.D. Ohio 2007) (same); *Elliott Co. v. Liberty Mut. Ins. Co.*, 239 F.R.D. 479, 480 n.1 (N.D. Ohio 2006) (same).

Here, Plaintiffs requested and were granted leave to file an overlength reply in support of their motion for class certification. Dkt. 3554, Order (Nov. 13, 2020). In the motion for leave, Plaintiffs expressly acknowledged that they wanted the extra pages in order to present and discuss additional evidence not addressed in their opening brief, including material that was allegedly “developed after the filing of the Class Certification Motion.” Dkt. 3554 at 2-3. Plaintiffs also stated in their email to Special Master Cohen regarding the request that they were “amenable to allowing Defendants to file a 10 page sur-reply.” Ex. 2, Email from Marc Dann to David R. Cohen (Nov. 13, 2020).

As Plaintiffs admit, they have both made new arguments and submitted new evidence in their reply brief. Among those items are three that Defendants seek to address in their narrowly-tailored surreply:

- Plaintiffs now offer a new class definition, (Dkt. 3555 at 2-3);
- Plaintiffs now offer a new declaration from their expert, Dr. Anand, that presents new opinions on a critical issue based on a new review of medical records (Dkt. 3557);
- Plaintiffs offer a new request for the certification of an issue class (Dkt. 3555 at 39-40).

Accordingly, Defendants request that the Court grant their motion for leave to file Exhibit 1 as a surreply.

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